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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/897,898	07/05/2001	Harm M. Deckers	034547-0104	3117
22428 7590 07/26/2007 FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007				
			EXAMINER PAK, YONG D	
			ART UNIT 1652	PAPER NUMBER
			MAIL DATE 07/26/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	Application No.	Applicant(s)	
	09/897,898	DECKERS ET AL.	
	Examiner	Art Unit	
	Yong D. Pak	1652	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 18 June 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 18 June 2007. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: \_\_\_\_\_.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

**ADVISORY ACTION**

This application is a CIP of 09/577,147, now issued as U.S. Patent No. 6,372,234.

***Response to Arguments***

The amendment filed on June 18, 2007 under 37 CFR 1.116 in reply to the final rejection has been considered and has been entered but is not deemed to place the application in condition for allowance because: the request for consideration does not overcome the rejection of claims 14-15, 18 and 29-31 under 35 U.S.C. 103(a) as being unpatentable over Moloney et al., Wieles et al., Rooijen et al. and Murphy et al., as discussed below.

Claims 14-15, 18 and 29-31 are pending and are under consideration.

***Response to Arguments***

Applicant's arguments filed June 18, 2007 have been fully considered but they are not persuasive.

***Claim Rejections - 35 USC § 103 - Maintained***

Claims 14-15, 18 and 29-31 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Moloney et al., Wieles et al., Rooijen et al. and Murphy et al.

In response to the previous Office Action, applicants have traversed the above rejection.

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Applicants argue that neither Moloney et al., Wieles et al. nor Rooijen et al. suggests formulating into an emulsion a washed oil body preparation and Murphy et al. fails to suggest an emulsion formulation. Examiner respectfully disagrees. Rooijen et al. discloses that oil-bodies, which comprises the heterologous-oleosin fusion protein, remain intact after aqueous extractions, which is an equivalent to "washing" the oil bodies (page 72). Murphy et al. discloses that oleosins act as natural emulsifying agents and/or as emulsion-stabilizing agents in oil-in-water emulsions, similar to mayonnaise and salad dressings (page 931). Therefore, it would have been obvious to one having ordinary skill in the art to wash oil bodies comprising the fusion protein comprising oleosin and a heterologous protein such as thioredoxin, and then make an emulsion comprising the fusion protein. One of ordinary skill in the art would have been motivated to formulate the fusion protein into an emulsion to increase stability of the fusion protein for its re-use in catalysis. One of ordinary skill in the art would have had a reasonable expectation of success in making an emulsion comprising said fusion protein since Murphy et al. teaches that oleosins are natural emulsifying agents of oil-in-water emulsions.

Hence the rejection is maintained.

### **Conclusion**

None of the claims are allowable.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yong Pak whose telephone number is 571-272-0935. The examiner can normally be reached 6:30 A.M. to 5:00 P.M. Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapu Achutamurthy can be reached on 571-272-0928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).



Yong D. Pak  
Patent Examiner 1652